IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

W.P.(C).No.1003 of 2007(S)

PETITIONER:-

MR.AHAMMED KUTTY,
S/O.SAIDALAVI, DILGAR KODIYATHOOR AMSOM,
CHERUVADI DESOM, KOZHIKODE.

BY ADV. SMT.SREEKALA KRISHNADAS
SRI.C.VIVEK
SRI.M.S.SARUN KUMAR

RESPONDENTS:-

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO STATE PUBLIC HEALTH DEPARTMENT.

2. PRESIDENT,
INDIAN MEDICAL ASSOCIATION,
I.M.A.HOUSE INDRAPRASTHA MARG, NEW DELHI-110 002.

3. PRESIDENT,
KERALA STATE BRANCH, I.M.A. KERALA STATE BRANCH
HEAD QUARTERS, P.O. ANAYARA, THIRUVANANTHAPURAM-24

4. SECRETARY,
INDIAN MEDICAL ASSOCIATION,
KERALA STATE BRANCH HEAD QUARTERS,
P.O.ANAYARA, THIRUVANANTHAPURAM-24.

5. PRESIDENT,
KERALA GOVERNMENT MEDICAL ASSOCIATION,
TRIVANDRUM.

R1 BY ADVOCATE GENERAL SRI.C.P.SUDHAKARA PRASAD
I/B.GOVERNMENT PLEADER SRI.T.B.HOOD.
R4 BY ADV. SRI.SAJEEVU MATHEW
SMT.RENU.K.MANI
SRI.VPK.PANICKER
R5 BY ADV.SRI.SAJEEVKUMAR K.GOPAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/01/2007, ALONG WITH W.P.(C).NO.1023 OF 2007 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - NEWS ITEM PUBLISHED IN HINDU NEWSPAPER DATED 04.01.2007.

EXT.P2 - NEWS ITEM PUBLISHED IN HINDU NEWSPAPER DATED 08.01.2007.

RESPONDENT'S ANNEXURES:-

ANNEXURE I - PHOTO COPY OF ORDER DATED 9.1.2007 OF THE COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, TRICHUR IN C.M.P.22/2007 IN CRIME NO.2/2007 OF GANDHI NAGAR POLICE STATION.

ANNEXURE-II - PHOTO COPY OF THE MINUTES OF THE MEETING DATED 3.1.2007 HELD BY THE SECRETARY TO GOVT., HEALTH & FAMILY WELFARE DEPARTMENT WITH THE MEMBERS OF THE KGMCTA.

ANNEXURE-III - PHOTO COPY OF THE MINUTES OF THE MEETING DATED 6.1.2007 HELD BY THE HON. MINISTER FOR HEALTH & SOCIAL WELFARE WITH THE MEMBERS OF KGCTA.

- TRUE COPY -

V.K.Bali,C.J. & M.Ramachandran,J.

W.P.(C).Nos.1003 of 2007-S, 1023 of 2007-S,
1067 of 2007-S & 1249 of 2007-S

Dated, this the 11th day of January, 2007

JUDGMENT

V.K.Bali,C.J. (Oral)

By this common order, we propose to dispose of four connected petitions bearing Nos.1003, 1023, 1067 and 1249 of 2007. The bare minimum facts, however, that need necessary mention have been extracted from W.P.(C).No.1003 of 2007-S, **Ahmedkutty** v. **State of Kerala and others**. The petitioner is an Advocate, who is stated to be widely involved in social activities. Through the present petition filed by him, he invited the attention of this Court to the illegal, irregular and most felonious attitude of organisation of doctors, from whom the whole society expects great responsibility and nobility. It is the case of the petitioner that one of the greatest achievement of Kerala Model development is the public health system which was developed and patroned by the Government of Kerala. This system imparted a health security consciousness, primarily

among the poor people in the State. The well dedicated and scholared doctors who followed this profession is considered as very sacred, but by passage of time the system has begun to change. Now, one of the extreme steps likely to happen is the strike called on by the Indian Medical Association, Kerala Branch on 12.01.2007. The strike is stated to be in connection with the arrest against a doctor in Medical College, Kottayam on charges of corruption, negligence and consequential death of a young man. The police has registered a case against him. He was also suspended from service. Against this, the organisations of doctors started agitation by conducting strikes by all the doctors at all the five Government Medical Colleges following a call given by the Kerala Medical College Teachers' Association. This strike seriously disrupted the functioning of all the Government Medical Colleges and is still continuing to affect the public in large scale. On the same date, whole doctors, including juniors and P.G. students of Kottayam Medical College went on a 24-hours strike. That strike practically paralysed the whole function of Medical College, including the out patient department. Thousands of poor people were the victims of that strike. The news item appeared in "the

Hindu" dated 8.1.2007 has been produced along with the petition. Apart from continuing hazard, now the Indian Medical Association has called for a full day strike by all the doctors including the private doctors. On 7.1.2007, the Indian Medical Association (I.M.A.) had conducted a press conference at Kochi and announced a 'medical strike' on 12.1.2007. The prayer in this petition is to issue a writ in the nature of mandamus declaring the strike as alleged to be conducted by the doctors to be illegal and also to issue a writ in the nature of mandamus directing the 1st respondent-State of Kerala to invoke the provisions of Essential Services Maintenance Act.

2. Pursuant to notice issued by this Court, the 1st respondent-State of Kerala has filed a statement. We need not delve upon the contents of the statement made by the State, as suffice it to mention that the Minister (Health & Social Welfare) on 6.1.2007 at 4.30 p.m. along with members of Kerala Government Medical College Teachers' Association has given the following suggestions:-

> "(1) Based on the complaint raised by KGMCTA that the guidelines issued by the Government with regard

to the registering of cases and investigation in the matter of medical negligence have not been followed by the District Authorities in the arrest of the doctor following the death of a youth in Kottayam Medical College, Government agreed that the police investigation would be entrusted to the Crime Branch. The Home Department would be requested for necessary orders in this regard.

(2) The incident of death will be referred to the state level Apex Committee comprising DHS, DME, Addl.DHS (Vig.) and Director General of Prosecution. The Committee will examine the various aspects of the case especially as to whether any negligence has occurred on the part of doctors including Dr.Asokan in giving ample treatment to the patient.

(3) The apex committee will be requested to give their report to the Investigating Officer and Government within **30 days**.

(4) Instructions will be issued that the procedures laid down as per the Supreme Court verdict and guidelines/circulars issued in this regard by State Government should be strictly followed in future in the matter of investigation and filling of charge sheet in the cases relating to medical negligence by Doctors".

3. The grievances of the doctors, if any, it appears, is being redressed by the Government itself. The decisions or suggestions by the Government apart, it is always open to the aggrieved doctor or association of doctors to approach different forums, be it Government or the Court, if it may find that

something wrong has been done either to the members of their association or an individual doctor. This decision or suggestion given by the Government aforesaid on 6.1.2007 is known to all the doctors of the State.

4. We had issued notice to respondents 3, 4 and 5 and they are all represented by their respective counsel. 5th respondent has filed the counter affidavit. It is pleaded therein that the Indian Medical Association has declared an agitation on 12.1.2007 and being part of I.M.A., the 5th respondent has also decided to strike on that day. Even though it is pleaded that the members of K.G.M.O.A. will not deny treatment to any persons coming to the hospital casualty and they will take the routine rounds in the hospital and that they will do all emergency operations also, the factum of going on strike is not denied. It has rather been admitted.

5. We have heard learned counsel for the parties at some length. During the course of argument, learned counsel representing the Indian Medical Association states that this Association itself had called off strike on 12.1.2007. The learned counsel representing the 5th respondent, the Kerala Government

Medical Officers' Association states that the members of said association would abide by the decision taken by the Indian Medical Association. In view of the stand taken by the respondents - Indian Medical Association and Kerala Government Medical Officers' Association - as mentioned above, we are sanguine that no strike shall be adverted to on 12.1.2007. There may not be, thus, any need to deal with these matters, but before we part with this order, we would like to mention that adopting to strike by doctors is prohibited by Rule 86 of the Government Servants' Conduct Rules, 1960. The same reads thus:-

> "86. Government servants not to partake in any strike.- No Government servant shall engage himself in any strike or incitement there to or in any similar activities. Government servants should not engage themselves in any concerted or organised slowing down or attempt at slowing down Government work or in any act which has the tendency to impede the reasonably efficient and speedy transaction of Government work. Concerted or organised refusal on the part of Government servants to receive their pay will entail severe disciplinary action".

We may also observe that the services by doctors are essential

services and if, therefore, the doctors of the State may strike, the Government would be well in its right to invoke the provisions of the Essential Services Maintenance Act and take action against them accordingly. We may also mention that in a noble profession which is totally service oriented, strike cannot be possibly resorted to. The members of the noble profession who are expected to serve the people cannot leave in lurch the patients at the time of their extreme difficulty, pain and suffering. We are sanguine that the doctors or the members of the association of the Indian Medical Association and Kerala Government Medical Officers' Association would always remember that albeit agony for themselves, they have to render service to the society. We can visualise that in certain cases doctors may be victims of harassment by miscreants, but they require to be aware of the doors of remedial measures that are available to them. They being engaged in a noble profession, should invariably seek remedy from an appropriate forum depending on the issue, instead of going on strike or getting onto streets shouting slogans.

In view of the present stand taken by the Indian

Medical Association and Kerala Government Medical Officers' Association so as not to go with strike on 12.1.2007, we close these matters. The petitioners are at liberty to file fresh petitions with regard to any other prayers, if they so desire.

V.K.Bali
Chief Justice

M.Ramachandran
Judge

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